(24)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. No. 125/01 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

SB: HON'BLE SHRI DHIRENDRA MISHRA, J.

APPELLANTS 1. Mahesh, aged about 28 years, S/o Bhikhram Gond, Occupation Cultivation
2. Tati @ Somi, aged about 24 years, S/o Sukdu Gond, Occupation Cultivation
Both resident of village Lihagaon Police Station Keshkal, Distt. Bastar Chhattisgarh

VERSUS

RESPONDENT State of Chhattisgarh

22-11-2007

Shri Vimlesh Bajpai, Advocate, for appellants.

Shri Arun Sao, Govt. Advocate, for the State.

2. This criminal appeal is directed against the judgment of conviction and order of sentence dated 6th December, 2000 passed in S.T. No. 258/1999 whereby learned Sessions Judge, Bastar at Jagdalpur has convicted the appellant Mahesh under Sections 363, 366 and 376(2)(g) of I.P.C. and appellant No. 2 Tati under section 363 read with Section 34, under Section 366 and 376(2)(g) of I.P.C. Accused Mahesh has been sentenced for offence under Section 363 and accused Tati has been sentenced for offence under Section 363 read with section 34 of I.P.C. to undergo R.I. for 2 years. For offence under Section 366 and 376(2)(g) of I.P.C., they have been sentenced to undergo R.I. for two years and ten years respectively.

3. Case of the prosecution, in brief, is that on 18-4-1999, the prosecutrix P.W. 1 lodged a report in Police Chouki Vishrampuri of

शासकीय क्षेत्रीय मुद्रणालय, राजनांदगांव —FS/59— 8/2007 —30,000.

(25)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A No. 125/01 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Police Station Keshkal that on 16-4-99 when she had gone to the place of priest to watch Video with friends Chandrika and Anita and she had gone out to ease herself with her friends, appellants and juvenile accused Tulsi (he is facing prosecution before Juvenile Justice Board) took her on their shoulder towards field and all the three committed rape with her. After registering offence in the police out post vide Ex. P-1, the offence was formally registered in police station Keshkal vide Ex. P-2. The prosecutrix was sent for medical examination to Komal Dev Hospital, Kanker where Dr. (Smt.) Hemlata Sahu examined her on 19-4-1999 and gave report of Ex. P-9. After completing investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Kondagaon and after committal, the appellants were tried by the Sessions Judge under the aforesaid sections.

4. During trial, 7 witnesses in all were examined by the prosecution and thereafter statements of accused persons were recorded in which they denied the evidence appearing against them in the prosecution case and pleaded that they have been falsely implicated because of animosity. They also examined Mithuram (D.W. 1) and Pilauram (D.W. 2) as defence witnesses.

5. Learned Sessions judge after hearing learned counsel for the parties, has convicted and sentenced the appellants as mentioned in paragraph 1 of the judgment.

सरकीय क्षेत्रीय मुद्रणालय, राजनांदगांव —FS/59— 8/2007 —30,000.

SIGNATURE SIGNATURE

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No-1251/01 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

6. Learned counsel for the appellant contended that from the perusal of the statement of the prosecutrix (P.W. 1) and alleged eye-witness P.W. 2 Anita, it would be evident that the prosecutrix was a consenting party as according to the allegations made against them, the offence of rape was committed by the three accused persons for almost an hour and in that period, the prosecutrix did not raise alarm even while she was dragged by the accused persons, then also she did not raise any alarm.

7. On the other hand, learned counsel for the State contended that from the Kotwari Register of Ex. P-22 and Birth Certificate of Ex. P-23 which have been proved by the Investigating Officer, the date of birth of the prosecutrix is 15-7-1985 and thus on the date of incident, the prosecutrix was leas then 14 years old. The prosecutrix was subjected to gang rape and she has deposed before the Court that she was bodily lifted by the appellant Mahesh despite her resistance and all the three took her to the field and committed rape with her against her wishes and therefore, in view of section 114A of the Evidence Act, absence of consent may be presumed.

8. I have heard learned counsel for the parties. I have perused the record of the trial Court as also the impugned judgment.

9. P.W. 5 C. Kerketta, Investigating Officer in paragraph 7 of his statement has proved the entry in Kotwari Register of Ex. P-22 and Birth Certificate of Ex. P-23 in which date of birth of the prosecutrix

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. 125/01 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

is shown as 15-7-1985. The defence has not cross-examined this witness regarding entries of the date of birth in the aforesaid documents and thus from the evidence of this witness which is duly established from the public document being Kotwari Register and Birth Certificate, the date of birth of the prosecutrix is established. Therefore, it is established that the age of the prosecutrix at the time of incident was less than 18 years.

10. Prosecutrix (P.W.1) has categorically stated that she along with Chandrika and Anita had gone to watch Video and when she came out to ease herself with her friends Anita and Chandrika, appellant Mahesh bodily lifted her despite her resistance and all the three accused persons took her towards field by gagging her mouth by inserting cloth. Her friends Chandrika and Anita followed her, however the accused persons did not release her despite their request and all the three committed rape one by one. When her father came there shouting, the accused persons fled from there after leaving her and she narrated the incident to her father. In the cross-examination she has admitted that when accused were committing rape with her, her friends did not go to call or inform anybody about the incident. She further stated that she did not accompany the accused persons of her own freewill.

11. P.W. 2 Ku. Anita who is also aged about 10-12 years, has been examined without administering of oath. She has stated that she had

सरकीय क्षेत्रीय मुद्रणालय, राजनांदगांव —FS/59— 8/2007 —30,000.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No - 125/01 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	gone with the prosecutrix and Chandrika to the place where they were watching Video. When they came out from Video, at that time, three accused persons took the prosecutrix towards tank. She followed them and there they made love with the prosecutrix while they were standing near the tank. They continued for a hour and thereafter the appellants left them to their respective houses and she narrated about the incident to her mother. She has admitted that at that time she did not go to call anybody nor the prosecutrix raised any alarm and she did not see what was done with the prosecutrix. It is true that the conduct of the P.W. 2 in not raising alarm or not calling anybody while the prosecutrix was dragged against her wishes is unnatural and there is evidence that the prosecutrix did not raise any alarm, however, considering the age of the prosecutrix that she was aged 14 years at the time of incident and further considering that rape was committed by three persons, the argument advanced by learned counsel for the appellants that the prosecutrix was a consenting party cannot be accepted particularly in view of Section 114A of the Evidence Act. The version of the prosecutrix is duly corroborated from the statement of Anita (P.W. 2) as also father of the prosecutrix Ratnu Ram (P.W. 3) and Dharamdas (P.W. 4) to whom the prosecutrix narrated about the incident immediately after the incident. 12. Thus from the evidence of the prosecutrix and Anita, the prosecution has been able to establish the offence against the	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. No - 125/01 **सन्** **200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	appellants and the finding of the trial Court convicting and sentencing the appellants as mentioned above is in accordance with the evidence available on record. 13. In the result, the appeal being devoid of substance deserves to be dismissed and it is hereby dismissed. **Sd/-** **DHIRENDRA MISHRA** **Judge**	